



1 U.S.C. § 2244(d)(1). For those prisoners whose convictions became final post-  
2 AEDPA, the one-year period starts running from the latest of four alternative  
3 dates set forth in 28 U.S.C. § 2244(d)(1)(A)-(D). *See, e.g., Patterson v. Stewart*,  
4 251 F.3d 1243, 1245-47 (9th Cir. 2001). Where, as here, the challenged  
5 judgment was affirmed by the state's highest court, the period of direct review  
6 ends either when the petitioner failed to file a *certiorari* petition in the United  
7 States Supreme Court and the 90-day period for doing so has expired, or when  
8 the Supreme Court has ruled on a filed petition. *See Clay v. United States*, 537  
9 U.S. 522, 527-32 and nn.3-4, 123 S. Ct. 1072, 155 L. Ed. 2d 88 (2003); *Wixom v.*  
10 *Washington*, 264 F.3d 894, 897 (9th Cir. 2001).

11 In this case, Petitioner does not appear to have filed a petition for  
12 *certiorari* in the United States Supreme Court. (*See* Petition at 5). Thus, under  
13 section 2244(d)(1)(A), Petitioner's conviction became final 90 days after the  
14 denial of the petition for review by the California Supreme Court. *See Clay*, 537  
15 U.S. at 527-32 and nn.3, 4; 28 U.S.C. § 2101(d); Sup. Ct. R. 13.1. Therefore,  
16 Petitioner's conviction became final on November 9, 2010. Accordingly, the  
17 one-year limitations period expired on November 9, 2011. *See Patterson*, 251  
18 F.3d at 1245-47. Because Petitioner did not initiate the current proceedings until  
19 August 14, 2014, the present action is untimely, absent statutory or equitable  
20 tolling. *See* 28 U.S.C. § 2244(d)(1); Fed. R. Civ. Proc. 6(a).

## 21 22 **2. STATUTORY TOLLING**

23 Title 28 U.S.C. § 2244(d)(2) provides that "[t]he time during which a  
24 properly filed application for state post-conviction or other collateral review with  
25 respect to the pertinent judgment or claim is pending shall not be counted toward  
26 any period of limitation under this subsection." However, a petitioner is not  
27 entitled to statutory tolling if he filed his initial state habeas petition after the  
28 one-year federal limitations period had expired. *Ferguson v. Palmateer*, 321

1 F.3d 820, 823 (9th Cir. 2003) (holding that 28 U.S.C. § 2244(d) “does not permit  
2 the reinitiation of the limitations period that has ended before the state petition  
3 was filed”).

4 According to the Petition, Petitioner initiated stated habeas proceedings on  
5 November 11, 2011, (Dkt. No. 1 at 3), two days after the federal one-year  
6 limitations period had expired. Because § 2244(d) “does not permit the  
7 reinitiation of the limitations period,” Petitioner is not entitled to statutory tolling  
8 in this case. *See Ferguson*, 321 F.3d at 823.

### 9 10 **3. EQUITABLE TOLLING**

11 The AEDPA limitations period also may be subject to equitable tolling, if  
12 the petitioner shows that extraordinary circumstances beyond the petitioner’s  
13 control made timely filing of a federal habeas petition impossible *and* the  
14 petitioner has acted diligently in pursuing his rights. *Holland v. Florida*, 560  
15 U.S. 631, 649, 130 S. Ct. 2549, 2562, 177 L. Ed. 2d 130 (2010). The petitioner  
16 bears the burden of showing that equitable tolling is appropriate. *Miranda v.*  
17 *Castro*, 292 F.3d 1063, 1065 (9th Cir. 2002).

18 Petitioner has not made any allegation that suggests that equitable tolling  
19 may be appropriate. Petitioner has made no showing of extraordinary  
20 circumstances or of diligence and, therefore, has not demonstrated that he is  
21 entitled to equitable tolling.  
22

### 23 **4. ORDER TO SHOW CAUSE**

24 Under the allegations and facts of the Petition, Petitioner has not  
25 demonstrated that he is entitled to a later start date. Therefore, and because the  
26 Petition does not demonstrate any basis for tolling the statute, the Court orders  
27 Petitioner to show cause in writing within 15 days of the date of this order why  
28

1 the Petition should not be dismissed as time-barred. If Petitioner fails to provide  
2 a timely response to this order, the Court will recommend that the Petition be  
3 dismissed as time-barred.  
4

5 IT IS SO ORDERED.  
6

7 DATED: March 11, 2016  
8  
9

10 /S/ FREDERICK F. MUMM

11 FREDERICK F. MUMM

12 United States Magistrate Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28